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*AP*

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

INVENTOR(S) : Keresman, III, et al.  
TITLE : **SECURE AND EFFICIENT  
PAYMENT PROCESSING SYSTEM**  
APPLICATION NO. : 09/488,297  
FILED : January 20, 2000  
CONFIRMATION NO. : 4241  
EXAMINER : Hani Kazimi  
ART UNIT : 3624  
LAST OFFICE ACTION : November 30, 2005  
ATTORNEY DOCKET NO. : PRAZ 2 00001

**RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF**

Mail Stop Appeal Briefs - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450


In responsive to the Notification of Non-Compliant Appeal Brief mailed November 30, 2005, Applicants are submitting concurrently herewith an amended brief.

Respectfully submitted,

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December 30, 2005

Date


  
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TITLE : SECURE AND EFFICIENT PAYMENT  
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EXAMINER : Snapp, Sandra S.  
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TRANSMITTAL OF  
APPEAL BRIEF UNDER 37 C.F.R. §41.37

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Commissioner for Patents  
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Alexandria, VA 22313-1450

Dear Sir:

Applicants transmit herewith one (1) copy of an AMENDED APPEAL BRIEF in response to a NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF for the above-referenced patent application.

No additional fee is believed due however, if this is not the case, the Commissioner is hereby authorized to charge any and all fees to Deposit Account No. 06-0308.

Respectfully submitted,

FAY, SHARPE, FAGAN,  
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Date: December 30, 2005


  
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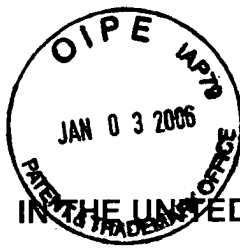
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December 30, 2005

Date



Iris E Weber



PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE HONORABLE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Application of

KERESMAN, III, et al.

Application No.: 09/488,297

Examiner: Snapp, Sandra S.

Filed: January 20, 2000

Docket No.: PRAZ 2 00001

For: **SECURE AND EFFICIENT PAYMENT  
PROCESSING SYSTEM**

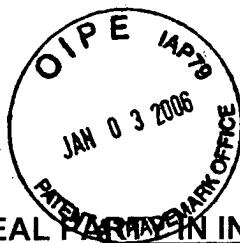
**BRIEF ON APPEAL (AMENDED)**

Appeal from Group 3624

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**I. REAL PARTY IN INTEREST**

The real party in interest for this appeal and the present application is CardinalCommerce Corporation (formally CardinalCommerce.com, Inc.), by way of an Assignment recorded in the U.S. Patent and Trademark Office at Reel 010617, Frame 0479.

**II. STATEMENT OF RELATED APPEALS AND INTERFERENCES**

There are no prior or pending appeals, interferences or judicial proceedings, known to Appellant, Appellant's representative, or the Assignee, that may be related to, or which will directly affect or be directly affected by or have a bearing upon the Board's decision in the pending appeal.

**III. STATUS OF CLAIMS**

Claims 23, 24, 26-36 and 38-42 are on appeal.

Claims 23, 24, 26-36 and 38-42 are pending.

Claims 23, 24, 26-36 and 38-42 are rejected.

Claims 1-22, 25 and 37 are canceled.

**IV. STATUS OF AMENDMENTS**

No Amendment After Final Rejection has been filed.

**V. SUMMARY OF CLAIMED SUBJECT MATTER**

**A. Independent Claim 23**

Claim 23 is directed to a method of processing a transaction carried out over a network between a financial account holder and a participating entity. FIGURE 1 shows a centralized transaction coordinator 10 that administers among other processes an online shopping process 300 wherein buyers or consumers engage in online commercial transactions with merchants or sellers. See page 6, lines 11-26. FIGURE 2 shows the coordinator 10 having a presence on the Internet 50 or another like network. Similarly, a buyer 30 (e.g., a financial account holder) and a seller 20 (e.g., a participating entity) also

have access to the network **50** over which the transaction is conducted. See page 6, line 37 through page 7, line 6.

The claimed method (e.g., the online shopping process **300** administered by the coordinator **10**) includes receiving a purchase request of a buyer **30** from the participating entity (e.g., the seller **20**) indicating that the buyer desires to carry out a transaction with the entity, the transaction including the buyer purchasing one or more selected items. FIGURES **6A** and **6B** show more detailed flow charts of two embodiments of the online shopping process **300**. Note, the purchase request **352**, in accordance with the claimed method, is received by the coordinator **10** and is sent from the seller **20**. See page 15, lines 20-29.

The claimed method also includes authenticating the buyer as the financial account holder. FIGURES **6A** and **6B** show the coordinator **10** administering an authentication process **310** and making a related determination **320** whether or not the buyer is the authentic account holder **30**. See page 14, lines 1-10.

Additionally, the claimed method includes establishing transaction fulfillment data, said transaction fulfillment data indicating a delivery destination for the selected items, wherein establishing the transaction fulfillment data includes using a previously obtained destination as the delivery destination for the selected items when an alternate destination is not obtained. FIGURES **6A** and **6B** show the coordinator **10** establishing the transaction fulfillment data at process **360**. FIGURE **6C** shows a more detailed flow chart of an exemplary embodiment of the fulfillment data establishing process **360**. Suitably, a user (i.e., buyer and/or account holder) pre-registers (e.g., via process **200** as shown in FIGURES **1** and **4**) with the coordinator **10** before using the online shopping process **300**. During registration **200**, optionally, a default delivery destination is established for the account holder and maintained by the coordinator **10**. See page 16, lines 16-19. For example, as shown in FIGURE **4**, the default delivery destination may be supplied by the account holder **30** to the coordinator **10** along with the account holder registration data **202** or along with the additional account creation data **226**.

In any event, the coordinator **10** at process **360** established the transaction fulfillment data **362** which preferably includes a delivery destination. See page 16, lines 7-10. Moreover, the previously obtained default destination is used to establish the

fulfillment data **362** unless an alternate destination is obtained. See page 16, lines 19-25.

Finally, the claimed method further includes:

- communicating the transaction fulfillment data to the participating entity (FIGURES **6A** and **6B** show the transaction fulfillment data **362** being sent from the coordinator **10** to the seller **20** (i.e., the participating entity), see also page 17, lines 16-19);
- receiving transaction details from the participating entity, said transaction details including a cost for the selected items (FIGURES **6A** and **6B** show the transaction details **384** being received by the coordinator **10** from the seller **20** (i.e., the participating entity), see also page 17, lines 26-32 identifying the transaction details **384** as including a cost for the selected items);
- authorizing completion of the transaction and establishing an authorization code therefor (FIGURES **6A** and **6B** show the coordinator **10** administering an authorization process **390** that establishes an authorization code **392**, see also page 17, lines 27-29, page 17, line 35 through 18, line 6, and page 18, lines 12-15); and,
- communicating the authorization code for the transaction to the participating entity (FIGURES **6A** and **6B** show the authorization code **392** being sent from the coordinator **10** to the seller **20** (i.e., the participating entity), see also page 18, lines 20-23).

#### **B. Independent Claim 26**

Claim 26 is directed to a method of processing transactions carried out over a network between account holders and participating entities. FIGURE 1 shows a central transaction coordinator **10** that administers among other processes an online shopping process **300** wherein buyers or consumers engage in online commercial transactions with merchants or sellers. See page 6, lines 11-26. FIGURE 2 shows the coordinator **10** having a presence on the Internet **50** on another like network. Similarly, a buyer **30** (e.g., an account holder) and a seller **20** (e.g., a participating entity) also have access to the



network **50** over which the transaction is conducted. See page 6, line 37 through page 7, line 6.

The claimed method also includes obtaining restriction instructions from account holders. Suitably, a user (i.e., buyer and/or account holder) pre-registers (e.g., via process **200** as shown in FIGURES **1** and **4**) with the coordinator **10** before using the online shopping process **300**. Upon acceptance of a newly registered account holder, the coordinator **10** creates and maintains a record for the account holder **30**, e.g., on the coordinator's database **14**. See FIGURE **1** and page 11, lines 2-9. The account holder record includes, among other information, account privileges that restrict authorization of transactions in identified circumstances that are set by the account holder **30**. Suitably, the coordinator **10** obtains the restriction instructions or related data that is stored in the coordinator's database **14** by the account holder accessing the coordinator's server **12** over the network **50** and customizing or setting their account privileges as they desire. See page 11, lines 10-31.

Additionally, the claimed method also includes:

- receiving a purchase request of a buyer from a participating entity indicating that the buyer desires to carry out a transaction with the entity, said transaction including the buyer purchasing one or more selected items (FIGURES **6A** and **6B** show the purchase request **352** received by the coordinator **10** from the seller **20**, see also page 15, lines 20-29);
- authenticating the buyer as an account holder (FIGURES **6A** and **6B** show the coordinator **10** administering an authentication process **310** and making a related determination **320** whether or not the buyer is the authentic account holder **30**, see also page 14, lines 1-10);
- receiving transaction details from the participating entity, said transaction details including one or more terms for the purchase (FIGURES **6A** and **6B** show the transaction details **384** being received by the coordinator **10** from the seller **20** (i.e., the participating entity), see also page 17, lines 26-32);
- authorizing completion of the transaction and establishing an authorization code therefor (FIGURES **6A** and **6B** show the

- coordinator **10** administering an authorization process **390** that establishes an authorization code **392**, see also page 17, lines 27-29, page 17, line 35 through 18, line 6, and page 18, lines 12-15); and,
- communicating the authorization code for the transaction to the participating entity (FIGURES **6A** and **6B** show the authorization code **392** being sent from the coordinator **10** to the seller **20** (i.e., the participating entity), see also page 18, lines 20-23).

### **C. Independent Claim 31**

Claim 31 is directed to a method of processing transactions carried out over a network between account holders and participating entities. FIGURE 1 shows a central transaction coordinator **10** that administers among other processes an online shopping process **300** wherein buyers or consumers engage in online commercial transactions with merchants or sellers. See page 6, lines 11-26. FIGURE 2 shows the coordinator **10** having a presence on the Internet **50** on another like network. Similarly, a buyer **30** (e.g., an account holder) and a seller **20** (e.g., a participating entity) also have access to the network **50** over which the transaction is conducted. See page 6, line 37 through page 7, line 6.

The claimed method includes:

- receiving a purchase request of a buyer from a participating entity indicating that the buyer desires to carry out a transaction with the entity, said transaction including the buyer purchasing one or more selected items (FIGURES **6A** and **6B** show the purchase request **352** received by the coordinator **10** from the seller **20**, see also page 15, lines 20-29);
- authenticating the buyer as an account holder (FIGURES **6A** and **6B** show the coordinator **10** administering an authentication process **310** and making a related determination **320** whether or not the buyer is the authentic account holder **30**, see also page 14, lines 1-10);
- receiving transaction details from the participating entity, said transaction details including a cost for the purchase (FIGURES **6A** and **6B** show the transaction details **384** being received by the coordinator

**10** from the seller **20** (i.e., the participating entity), see also page 17, lines 26-32 identifying the transaction details **384** as including a cost for the selected items);

- authorizing completion of the transaction and establishing an authorization code therefor (FIGURES **6A** and **6B** show the coordinator **10** administering an authorization process **390** that establishes an authorization code **392**, see also page 17, lines 27-29, page 17, line 35 through 18, line 6, and page 18, lines 12-15); and,
- communicating the authorization code for the transaction to the participating entity (FIGURES **6A** and **6B** show the authorization code **392** being sent from the coordinator **10** to the seller **20** (i.e., the participating entity), see also page 18, lines 20-23).

Additionally, the claimed authorizing step includes: transmitting the transaction details of the authenticated account holder to a funding source which determines if the account holder has one of sufficient funds on deposit with the funding source or sufficient credit available through the funding source to cover the cost of the purchase. See, e.g., page 17, line 35 through page 18, line 6, and page 18, lines 11-15.

#### **D. Independent Claim 32**

Claims 32 is directed to method of processing transactions carried out over a network between account holders and participating entities. FIGURE 1 shows a central transaction coordinator **10** that administers among other processes an online shopping process **300** wherein buyers or consumers engage in online commercial transactions with merchants or sellers. See page 6, lines 11-26. FIGURE 2 shows the coordinator **10** having a presence on the Internet **50** on another like network. Similarly, a buyer **30** (e.g., an account holder) and a seller **20** (e.g., a participating entity) also have access to the network **50** over which the transaction is conducted. See page 6, line 37 through page 7, line 6.

The claimed method includes:

- receiving a request indicating that a buyer desires to carry out a transaction with a participating entity, said transaction including the buyer purchasing one or more selected items (FIGURES **6A** and **6B**

show the purchase request **352** received by the coordinator **10** from the seller **20**, see also page 15, lines 20-29);

- authenticating the buyer as an account holder (FIGURES **6A** and **6B** show the coordinator **10** administering an authentication process **310** and making a related determination **320** whether or not the buyer is the authentic account holder **30**, see also page 14, lines 1-10);
- receiving transaction details including one or more terms for the purchasing the selected items (FIGURES **6A** and **6B** show the transaction details **384** being received by the coordinator **10** from the seller **20** (i.e., the participating entity), see also page 17, lines 26-32 identifying the transaction details **384** as including a cost for the selected items);
- authorizing completion of the transaction and establishing an authorization code therefor (FIGURES **6A** and **6B** show the coordinator **10** administering an authorization process **390** that establishes an authorization code **392**, see also page 17, lines 27-29, page 17, line 35 through 18, line 6, and page 18, lines 12-15); and,
- communicating the authorization code for the transaction to the participating merchant (FIGURES **6A** and **6B** show the authorization code **392** being sent from the coordinator **10** to the seller **20** (i.e., the participating entity), see also page 18, lines 20-23).

The claimed method also includes obtaining settlement information from the participating entity, said settlement information including the authorization code and transaction details for the completed transaction. FIGURE **1** shows a settlement process **400** also administered by the coordinator **10**. See page 6, lines 23-26. FIGURE **7** shows a more detailed flow chart of the settlement process **400**. In particular, FIGURE **7** shows the coordinator obtaining settlement information **402** from the seller **20** for a completed commercial transaction. See page 18, lines 24-27. The obtained settlement information **402** preferably includes the authorization code **392** and the corresponding transaction details **384** for the completed transaction in question. See page 19, lines 9-12.

Additionally, the claimed method includes: confirming that the transaction details corresponding to the authorization code received with the settlement information are within a desired tolerance (see page 19, lines 12-24); and, communicating the confirmed settlement information **402b** to a funding source **40** to effect reimbursement **420** of the participating entity (e.g., the seller **20**) and billing **410** of the account holder **30** (see FIGURE 7 and page 19, lines 25-34).

#### **E. Independent Claim 41**

Claim 41 is directed to a system for processing a transaction carried out over a network between a financial account holder and a seller. FIGURE 1 shows a centralized transaction coordinator **10** that administers among other processes an online shopping process **300** wherein buyers or consumers engage in online commercial transactions with merchants or sellers. See page 6, lines 11-26. FIGURE 2 shows the coordinator **10** having a presence on the Internet **50** or another like network. Similarly, a buyer **30** (e.g., a financial account holder) and a seller **20** (e.g., a participating entity) also have access to the network **50** over which the transaction is conducted. See page 6, line 37 through page 7, line 6. The coordinator **10** employs a server **12** and/or database **14** as the means to carry out the various functions of the online shopping process **300**.

The claimed system includes:

- means for receiving a purchase request of a buyer from the seller indicating that the buyer desires to carry out a transaction with the seller, said transaction including the buyer purchasing one or more selected items (FIGURES **6A** and **6B** show the purchase request **352** received by the coordinator **10** from the seller **20**, see also page 15, lines 20-29, and FIGURE 2 shows the coordinator's server **12** interconnected for communication via the network **50** with the seller's server **22** thereby providing the server **12** as the means to achieve the forgoing function);
- means for authenticating the buyer as the financial account holder (FIGURES **6A** and **6B** show the coordinator **10** administering an authentication process **310** and making a related determination **320** whether or not the buyer is the authentic account holder **30**, see also page 14, lines 1-10, and FIGURE 2 shows the coordinator's server **12**

interconnected for communication via the network **50** with the buyer's computer **32** thereby providing the server **12** as the means to achieve the forgoing function);

- means for establishing transaction fulfillment data, said transaction fulfillment data indicating a delivery destination for the selected items (FIGURES **6A** and **6B** show the coordinator **10** at process **360** establishing the transaction fulfillment data **362** which preferably includes a delivery destination, see also page 16, lines 7-10, FIGURE **2** shows the server **12** and/or database **14** employed by the coordinator **10** that administers the online shopping process **300** thereby providing the means to achieve the forgoing function, e.g., the server **12** provides for communication with the buyer **30** from which an alternate delivery destination is optionally received (see FIGURE **6C** showing the process **360** administered by the coordinator **10** including an option for delivery destination selection by a buyer, and FIGURE **2** showing the interconnection of the coordinator's server **12** and the buyer's computer **32** via the network **50** for communication therebetween), and the database **14** provides for storage of a default delivery address that may be employed to establish the transaction fulfillment data (see FIGURE **2** and page 16, lines 16-19 and page 11, lines 2-4));
- means for communicating the transaction fulfillment data to the seller (FIGURES **6A** and **6B** show the transaction fulfillment data **362** being sent from the coordinator **10** to the seller **20**, see also page 17, lines 16-19, and FIGURE **2** shows the coordinator's server **12** interconnected for communication via the network **50** with the seller's server **22** thereby providing the server **12** as the means to achieve the forgoing function);
- means for receiving transaction details from the seller, said transaction details including a cost for the selected items (FIGURES **6A** and **6B** show the transaction details **384** being received by the coordinator **10** from the seller **20**, see also page 17, lines 26-32 identifying the transaction details **384** as including a cost for the selected items, and FIGURE **2** shows the coordinator's server **12** interconnected for communication via the network

50 with the seller's server 22 thereby providing the server 12 as the means to achieve the forgoing function);

- means for authorizing completion of the transaction and establishing an authorization code therefor (FIGURES 6A and 6B show the coordinator 10 executing an authorization process 390 that establishes an authorization code 392, see also page 17, lines 27-29, page 17, line 35 through 18, line 6, and page 18, lines 12-15, and FIGURE 2 shows the server 12 and/or database 14 employed by the coordinator 10 that administers the online shopping process 300 thereby providing the means to achieve the forgoing function); and,
- means for communicating the authorization code for the transaction to the seller (FIGURES 6A and 6B show the authorization code 392 being sent from the coordinator 10 to the seller 20, see also page 18, lines 20-23, and FIGURE 2 shows the coordinator's server 12 interconnected for communication via the network 50 with the seller's server 22 thereby providing the server 12 as the means to achieve the forgoing function).

## **VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

The following grounds of rejection are presented for review:

Claims 41 and 42 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite;

Claims 23, 24, 26-28, 31-34 and 36-40 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,799,156 to Shavit, et al. (hereinafter merely referred to as Shavit); and,

Claims 29 and 30 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Shavit in view of U.S. Patent No. 5,826,245 to Sandber-Diment.

## **VII. GROUPING OF CLAIMS**

Claims 23, 24, 26-28, 31-34 and 36-40 do not stand or fall together. The independent claims 23, 26, 31 and 32 are separately patentable from one another. Accordingly, claims 23, 24 and 36 stand or fall on their own; claims 26-30 and 38 stand

or fall on their own; claims 31 and 39 stand or fall on their own; and, claims 32-35 and 40 stand or fall on their own.

### **VIII. ARGUMENTS**

Initially, a brief summary of the procedural history of the application will be presented inasmuch as the Applicants deem it to be informative and/or relevant to the weakness of the rejections sought to be reviewed.

After filing the application, Applicants received a first non-final Office Action on the merits (i.e., paper No. 9) indicating allowable subject matter in the originally presented claims 23-28 and 31-33. Supervisory Patent Examiner Vincent Millin signed off on the first non-final Office Action. Thereafter, Applicants arranged for an Examiner Interview with Examiner Sandra Snapp (i.e., the examiner assigned to examine the application). Prior to the interview, Examiner Snapp was faxed proposed claim amendments. Independent claims 23, 26, 31 and 32 as they currently stand are essentially the same as if not identical to those proposed prior to the interview. Notably, in the Interview Summary (i.e., paper No. 10) which Examiner Snapp prepared and signed herself following the interview, she again expresses clearly that the proposed claims "were identified as being allowable over the prior art of record." Shavit and Sandber-Diment were both references of record prior to the first Office Action and the interview. Importantly, the fact that the current rejections are ultimately untenable is further underscored by the fact that on prior occasions, after having had ample opportunity to reject the claims based upon references of record already before them, apparently both Examiner Snapp and Supervisory Examiner Millin were convinced of the allowable nature of the claims over the references upon which the present prior art rejections are now based.

#### **A. Claims 41 & 42 Are Not Indefinite**

The final Office Action (mail date January 12, 2005) alleges that claims 41 and 42 are indefinite and hence rejected under 35 U.S.C. §112, second paragraph. The alleged grounds for the rejection is that the claims are directed to a "system" and can therefore "be interpreted to be an apparatus or a method." This position is however untenable and the rejection should be reversed.



While indeed the preamble of the claims recite a system, the term system is not in and of itself indefinite. Moreover, each and every element in the body of the independent claim 41 is described using means-plus-function language. Clearly, the claim elements are means and not steps, and clearly the claim is directed to an apparatus including the claimed means and not a method including steps. In this way, claim 41 particularly points out and distinctly claims the subject matter which Applicants regard as their invention. Claim 42 depends from claim 41 and is accordingly also clearly directed to an apparatus.

Contrary to the allegation in the final Office Action, claims 41 and 42 are definite and clearly directed to an apparatus as evident from the claimed elements. The piecemeal dissection of a selected term from the preamble of the claim and its review out of context from the rest of the claim is inappropriate and erroneous. It is well settled that "in reviewing a claim for compliance with 35 U.S.C. §112, second paragraph, the examiner must consider the claim as a whole." Manual of Patent Examining Procedure (MPEP) §2173.02. In this case, the claim as a whole is not render indefinite simply because the claim recites a "system" in the preamble. When considered as a whole (i.e., including the claimed elements in the body of the claim), the claim is clearly directed to an apparatus. Any alleged confusion as to the meaning of the claims on the part of the examiner is disingenuous and specious.

Accordingly, for at least the reasons outlined above, the rejection of claims 41 and 42 under 35 U.S.C. §112, second paragraph, is in error and should be reversed. Moreover, having no other outstanding rejections or objections, claims 41 and 42 should be held allowed.

#### **B. Brief Summary of the Shavit Reference**

Shavit is directed to creating an artificial industry-based market place whereby distributors, buyers and other market participants in a particular industry can meet and interactively transact business. Unlike the current application, the participants transacting together are concurrently logged-in to the system to access one another's data. Essentially, the Shavit system merely acts as a conduit to connect respective parties that wish to transact business together by providing an electronic mail system that distributes mail messages (e.g., orders, bids, delivery advisories, etc.) to the

respective parties. The transaction details are negotiated between the participants themselves. In effect, the Shavit system is not processing the transaction at all, but rather, is merely passing messages back and forth. On the contrary, in the present application, the transaction is actually processed by the third party centralized coordinating entity/system, i.e., it authenticates the buyer, establishes transaction fulfillment data, authorizes completion of the transaction, etc.

### **C. General Arguments Regarding the Rejections Based on Shavit**

Generally, the rejections based on Shavit are erroneous and should be reversed inasmuch as Shavit fails to anticipate the claimed subject matter. The MPEP is instructive on this point. According to MPEP §2131, to anticipate a claim under 35 U.S.C. §102, "the reference must teach every element of the claim" and "the identical invention must be shown in as complete detail as is contained in the ... claim" and "the elements must be arranged as required by the claim." [Citations omitted]. Importantly, Shavit does not teach the claimed elements arranged as required. Applicants note that the grounds for rejection based upon Shavit take unrelated passages out of context from various diverse parts of the reference, and they are recombined capriciously in an attempt to read on the claimed invention. The reference simply does not contemplate such a random reconstruction of its elements. In rejecting the claims, seemingly unrelated text is cite from all over the reference. For example, an impermissible piecemeal rejection of the claims is supported by citing to various disconnected and unrelated passages of text which allegedly disclose the claimed elements/steps. That is to say, it is alleged that col. 6, lines 36-39 teaches one element; while col. 9, line 60 though col. 10, line 15, teaches another; col. 14, lines 28-33 teaches yet another; col. 13, lines 35-50 teaches still another element; and, so on. Clearly, this is an impermissible rearranging of the teachings of Shavit to meet the claims in a way not contemplated by the reference. Shavit simply does not teach the claimed invention, because it is not directed to the same type of claimed transaction processing application, but is rather directed to merely creating an artificial market place.

**D. Claim 23 is Not Anticipated by Shavit**

Shavit fails to anticipate independent claim 23 inasmuch as Shavit does not explicitly teach or fairly suggest all of the claimed elements. Claim 23 calls for "receiving a purchase request ... from the participating entity indicating that the buyer desires to carry out a transaction with the entity, said transaction including the buyer purchasing one or more selected items." The Examiner cites col. 6, lines 36-39 as disclosing this element. However, the cited passage teaches nothing of the sort. Rather, the cited text merely states that "a distributor may offer its customer an interactive, convenient and consistent way to place orders or conduct any other business with the distributor." Notably, in Shavit, it is never expressly taught that the IMM 50 receives a purchase request (i.e., an order) from a distributor or selling party. Purchase orders are apparently delivered from subscribing buyers to distributors. They are not received by the system 50. Moreover, the purchase orders are placed by the subscribing buyer. Accordingly, if the system 50 were to receive them from anyone, it would be from the subscribing buyer, not the entity or seller filling the order. This is contrary to the claim which recites that the purchase request is received from the participating entity, i.e., the entity from which the buyer is purchasing the item, e.g., the seller (or the distributor in the case of Shavit).

Notably, FIGURE 3 shows the buyer transaction function in accordance with the teachings of Shavit. See, col. 2, lines 51-55. More specifically, the procurement process 124 of FIGURE 3 is illustrated in greater detail in FIGURE 14 which shows the purchase order entry process 336. See, col. 3, lines 41-45. Accordingly, the purchase order entry process 336 is part of the buyer transaction function. In the purchasing function, orders are entered by the buyer. See col. 25, lines 58-59. In any event, nowhere is it taught by Shavit that the purchase orders are received by the IMM system 50 from distributors or sellers or other like situated entities. Conversely, in the present application the coordinator 10 receives the purchase request from the seller 20 not the buyer 30.

Claim 23 calls for "authenticating the buyer as the financial account holder." Shavit also fails to expressly teach or fairly suggest this feature. The Examiner cites col. 9, line 60 through col. 10, line 15 as disclosing this feature. However, the cited text does not disclose the claimed authentication. The cited passage merely describes how

a subscribing user logs-in to and/or accesses the IMM system 50. Nowhere does it even suggest that the subscribing user is authenticated by the IMM system 50 as the holder of any kind of financial account as claimed.

Claim 23 further calls for “establishing transaction fulfillment data, said transaction fulfillment data indicating a delivery destination for the selected items, wherein establishing the transaction fulfillment data includes using a previously obtained destination as the delivery destination for the selected items when an alternate destination is not obtained.” Again, Shavit fails to disclose this element/step. The Examiner cites col. 14, lines 28-33 as disclosing this element/step. However, the cited text does not disclose the claimed establishment of transaction fulfillment data. The cited text reads, “The distributor normally delivers an order to the buy’s site, however, it is possible to take delivery in the distributor’s, the agent’s, or the manufacturer’s warehouse. The system, therefore, provides extensive services to allow reservation and control of freight services.” Nowhere does this passage suggest that the IMM system 50 establishes any transaction fulfillment data. It only suggests that the delivery site may be at a number of exemplary locations other than the buy’s site, and that a mechanism is provided to select the delivery location. This does not mean that the IMM system 50 is establishing the transaction data as claimed.

In the present application the fulfillment data is established by the coordinator 10, e.g., retrieving a previously obtained destination from the database 14 when no alternate destination is selected by the buyer. Nowhere does Shavit teach that the IMM 50 establishes the transaction fulfillment data using a destination previously obtained by the IMM system 50. Rather, Shavit merely suggests that the buyer may select different delivery destinations. Moreover, freight service operations 132 are handled separately and distinctly from the procurement process 124. See FIGURE 3. Note, the freight service reservation process 462 is shown in FIGURE 19 which details freight service operations 132 and not in FIGURE 14 which details procurement operations 124 (i.e., including purchases). Accordingly, freight service and/or delivery instructions are handled outside and separately from the purchase process.

Additionally, claim 23 calls for “receiving transaction details from the participating entity, said transaction details including a cost for the selected items; authorizing completion of the transaction and establishing an authorization code therefor; and,

communicating the authorization code for the transaction to the participating entity.” The Examiner cites col. 13, lines 35-50 as teaching the foregoing. In fact, however, the cited passage does not teach this. In particular, the text discloses that a distributor and buyer negotiate a purchase agreement fixing a price for goods. The terms of the agreement, and hence the transaction, is therefore authorized by the seller.

The IMM system **50** does not authorize completion of the transaction as claimed nor does the IMM system **50** establish an authorization code. In fact, nowhere is an authorization code even mentioned. Conversely, in the present application, the coordinator **10** (not the seller) authorizes completion of the transaction and establish the authorization code therefor.

For the reasons outlined above, claim 23 defines patentably over Shavit, along with claims 24 and 36 that depend therefrom. Accordingly, the rejection of claims 23, 24 and 36 under 35 U.S.C. §102(b) is in error and should be reversed. Moreover, having no other outstanding rejections or objections, these claims should be held allowed.

#### **E. Claims 26 & 28 Are Not Anticipated by Shavit**

Shavit fails to anticipate independent claim 26 inasmuch as Shavit does not explicitly teach or fairly suggest all of the claimed elements. Moreover, Shavit fails to anticipate claim 28 inasmuch as Shavit does not explicitly teach or fairly suggest the further refinements and/or features recited in claim 28 which depends from claim 26. In particular, claim 26 recites “obtaining restriction instructions from account holders” and claim 28 recites “wherein said restriction instructions block authorizing the completion of recurring transactions which are not separately participated in by the account hold from whom the restriction instructions were obtained.” Shavit teaches no such features. The Examiner cites col. 6, lines 52-68 as disclosing the claimed subject matter. However, this passage has nothing to do with restricting automatically recurring transactions. In fact, the cited text make no mention of obtaining restriction instructions or blocking the completion of any transactions. Accordingly, claim 26 further defines patentably over the reference along with the claims depending therefrom, and in particular claim 28.

Claim 26 also calls for “receiving a purchase request ... from the participating entity indicating that the buyer desires to carry out a transaction with the entity, said transaction including the buyer purchasing one or more selected items.” Shavit teaches

nothing of the sort. Rather, Shavit merely teaches that a distributor may offer its customer an interactive, convenient and consistent way to place orders or conduct any other business with the distributor. Notably, Shavit never expressly discloses that the IMM 50 receives a purchase request (i.e., an order) from a distributor or selling party. This is contrary to the claim which recites that the purchase request is received from the participating entity, i.e., the one from which the purchase is being made, e.g., the seller (or the distributor in the case of Shavit).

Additionally, claim 26 also calls for "receiving transaction details from the participating entity, said transaction details including one or more terms for the purchase; authorizing completion of the transaction and establishing an authorization code therefor; and, communicating the authorization code for the transaction to the participating entity." Shavit, however, does not teach this. In Shavit, e.g., a purchase agreement fixing a price for goods is negotiated directly between a distributor/seller and buyer. The terms of the agreement, and hence the transaction, is therefore authorized by the seller. The IMM system 50 does not authorize completion of the transaction as claimed nor does the IMM system 50 establish an authorization code.

For the reasons outlined above, claim 26 defines patentably over Shavit, along with claims 27-30 and 38 that depend therefrom. Accordingly, the rejection of claims 26-28 and 38 under 35 U.S.C. §102(b) and the rejection of claims 29 and 30 under 35 U.S.C. §103(a) are in error and should be reversed. Moreover, having no other outstanding rejections or objections, these claims should be held allowed.

#### **F. Claim 31 is Not Anticipated by Shavit**

Claim 31 calls for "receiving a purchase request ... from the participating entity indicating that the buyer desires to carry out a transaction with the entity, said transaction including the buyer purchasing one or more selected items." Shavit, as already pointed out, does not teach this element. Rather, Shavit merely teaches that "a distributor may offer its customer an interactive, convenient and consistent way to place orders or conduct any other business with the distributor." Notably, in Shavit, it is never expressly taught that the IMM system 50 receives a purchase request (i.e., an order) from a distributor or selling party. If at all, the IMM system 50 receives purchase orders from the subscribing buyer, not the entity or seller filling the order. This is contrary to the

claim which recites that the purchase request is received from the participating entity, i.e., the one from which the purchase is being made, e.g., the seller (or the distributor in the case of Shavit).

Additionally, claim 31 also calls for "receiving transaction details from the participating entity, said transaction details including a cost for the purchase; authorizing completion of the transaction and establishing an authorization code therefor ...; and, communicating the authorization code for the transaction to the participating entity." Shavit, as previously noted, does not teach this. In Shavit, a distributor and buyer negotiate a purchase agreement fixing a price for goods. The terms of the agreement, and hence the transaction, is therefore authorized by the seller. The IMM system 50 does not authorize completion of the transaction as claimed nor does the IMM system 50 establish an authorization code. As already noted, nowhere is an authorization code even mentioned.

Moreover, claim 31 further calls for authorizing completion of the transaction and establishing an authorization code to include "transmitting the transaction details of the authenticated account holder directly to a funding source which determines if the account holder has one of sufficient funds on deposit with the funding source or sufficient credit available through the funding source to cover the cost of the purchase; and, receiving the authorization code from the funding source." Contrary to the Examiner's allegation, Shavit also fails to expressly teach this feature. Nevertheless, col. 26, line 29 through col. 27, line 30 is cited as disclosing this feature. However, the cited text merely describes a "procurement process" that "permits the buyer to instruct its bank to pay a bill or group of bills to a distributor or other payees, based on agreements between the buyer, the payee and the buyer's bank." Again, the transaction is carried out by the parties themselves based upon a predetermined agreement, and there is no mention at all of any authorization code. This is not what is being claimed.

For the reasons outlined above, claim 31 defines patentably over Shavit, along with claim 39 that depends therefrom. Accordingly, the rejection of claims 31 and 39 under 35 U.S.C. §102(b) is in error and should be reversed. Moreover, having no other outstanding rejections or objections, these claims should be held allowed.

**G. Claim 32 is Not Anticipated by Shavit**

Claim 32 calls for “receiving a request indicating that a buyer desires to carry out a transaction with a participating entity, said transaction including the buyer purchasing one or more selected items; authenticating the buyer as an account holder; receiving transaction details including one or more terms for the purchasing the selected items; authorizing completion of the transaction and establishing an authorization code therefor; and communicating the authorization code for the transaction to the participating merchant.” As already noted above, Shavit fails to explicitly teach or fairly suggest any of the foregoing elements as claimed.

Additionally, claim 32 includes elements directed and/or related to transaction settlement. More specifically, claim 32 calls for “obtaining settlement information from the participating entity, said settlement information including the authorization code and transaction details for the completed transaction; confirming that the transaction details corresponding to the authorization code received with the settlement information are within a desired tolerance; and, communicating the confirmed settlement information to a funding source to effect reimbursement of the participating entity and billing of the account holder.” Shavit also fails to disclose the foregoing elements. Notably, the Examiner never even alleges that Shavit teaches the claimed confirming of the transaction details or the claimed communicating of confirmed settlement information to a funding source.

Notably, the payment process **344** (shown in **FIGURE 14** and in greater detail in **FIGURE 15**) is part of the procurement procedure **124** shown in **FIGURE 3** as an option for a buyers transaction. Accordingly, the processing of payment instructions are initiated by the buyer. Nowhere in this process is it suggested that the IMM system **50** obtains settlement information (including an authorization code and transaction details) from a seller, nor that transaction details are confirmed by the IMM system **50**. Finally, per box **376** of **FIGURE 15**, Shavit merely disclose issuing payment orders. This is not the same a providing the funding source with confirmed settlement information. Nowhere does Shavit suggest that the payment orders anywhere indicated that any information has been confirmed or that the information in the payment order includes even settlement information. For example, Shavit arguably contemplates no more than



communicating to a financial institution an instruction to pay a given seller a sum of money from a given account.

For the reasons outlined above, claim 32 defines patentably over Shavit, along with claims 33-35 and 40 that depend therefrom. Accordingly, the rejection of claims 32-35 and 40 under 35 U.S.C. §102(b) is in error and should be reversed. Moreover, having no other outstanding rejections or objections, these claims should be held allowed.

#### **H. Claims 23, 26, 31 and 32 are Separately Patentable**

Claim 23, 26, 31 and 32 are all separately patentable from one another. Notably, each claim is an independent claim distinct and standing alone from the others. Clearly, as independent claims not depending on or referencing the others, each of the claims stands or falls on its own merits. Moreover, the scope of the claims are different from one another. When comparing each independent claim to the other independent claims, there are mutually distinct elements claimed that create a separately patentable difference between them. Moreover, these different elements define the claims patentably over the art.

For example, claim 23 includes an element directed to establishing transaction fulfillment data that is absent from the other independent claims. Accordingly, claim 23 is separately patentable from the other claims inasmuch as they are not of the same scope, they are mutually independent and they claim different elements. Similarly, claim 26 includes an element directed to obtaining restriction instructions from account holders that is absent from the other independent claims. Accordingly, claim 26 is separately patentable from the other claims inasmuch as they are not of the same scope, they are mutually independent, and they claim different elements.

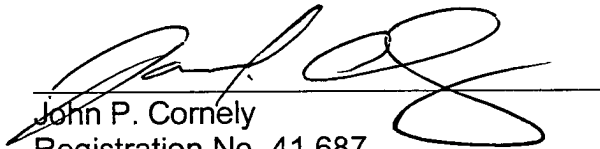
Claim 31 includes elements directed to transmitting the transaction details of the authenticated account holder to a funding source and receiving the authorization code from the funding source. These elements are absent from all the other claims and they create a substantive distinction therewith. Accordingly, claim 31 is separately patentable from the other claims inasmuch as they are not of the same scope, they are mutually independent, and they claim different elements.

Finally, claim 32 includes elements (f), (g) and (h) related to settlement of a transaction. All these elements are absent from all the other claims and they create a substantive distinction therewith. Accordingly, claim 32 is separately patentable from the other claims inasmuch as they are not of the same scope, they are mutually independent, and they claim different elements.

#### IX. CONCLUSION

For all of the reasons discussed above, it is respectfully submitted that the rejections are in error and that all the claims remaining are in condition for allowance. For all of the above reasons, Appellants respectfully request this Honorable Board to reverse the rejections of all the remaining claims.

Respectfully submitted,



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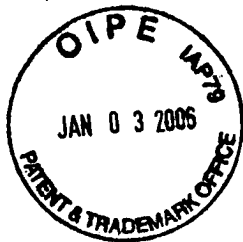
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I hereby certify that this **Brief on Appeal (Amended)** in connection with **Application Serial No. 09/488,297** is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on December 30, 2005.



Iris E. Weber



CLAIMS APPENDIX

Claims involved in the appeal:

1-22. (Cancelled).

23. (Previously Presented) A method of processing a transaction carried out over a network between a financial account holder and a participating entity, said method comprising the steps of:

(a) receiving a purchase request of a buyer from the participating entity indicating that the buyer desires to carry out a transaction with the entity, said transaction including the buyer purchasing one or more selected items;

(b) authenticating the buyer as the financial account holder;

(c) establishing transaction fulfillment data, said transaction fulfillment data indicating a delivery destination for the selected items, wherein establishing the transaction fulfillment data includes using a previously obtained destination as the delivery destination for the selected items when an alternate destination is not obtained;

(d) communicating the transaction fulfillment data to the participating entity;

(e) receiving transaction details from the participating entity, said transaction details including a cost for the selected items;

(f) authorizing completion of the transaction and establishing an authorization code therefor; and,

(g) communicating the authorization code for the transaction to the participating entity.

24. (Original) The method according to claim 23, wherein establishing the fulfillment data further includes:

obtaining an alternate destination from the buyer, said alternate destination being different from the previously obtained destination;

transmitting a security question to the buyer;

receiving a response to the security question from the buyer; and,

using the alternate destination as the delivery destination for the selected items when the response to the security question is accurate.

25. (Cancelled).

26. (Previously Presented) A method of processing transactions carried out over a network between account holders and participating entities, said method comprising the steps of:

- (a) obtaining restriction instructions from account holders;
- (b) receiving a purchase request of a buyer from a participating entity indicating that the buyer desires to carry out a transaction with the entity, said transaction including the buyer purchasing one or more selected items;
- (c) authenticating the buyer as an account holder;
- (d) receiving transaction details from the participating entity, said transaction details including one or more terms for the purchase;
- (e) authorizing completion of the transaction and establishing an authorization code therefor; and,
- (f) communicating the authorization code for the transaction to the participating entity.

27. (Previously Presented) The method according to claim 26, wherein said restriction instructions block authorizing the completion of transactions with participating entities identified in the restriction instructions.

28. (Original) The method according to claim 26, wherein said restriction instructions block authorizing the completion of recurring transactions which are not separately participated in by the account holder from whom the restriction instructions were obtained.

29. (Previously Presented) The method according to claim 26, wherein authorizing completion of the transaction includes comparing a cost of the selected items to a threshold such that if the cost is less than or equal to the threshold

authorization is given and if the cost is greater than the threshold authorization is denied.

30. (Previously Presented) The method according to claim 29, wherein the threshold represents an amount selected from a group consisting of funds on deposit for the account holder, credit available to the account holder, and a value set via the obtained restriction instructions.

31. (Previously Presented) A method of processing transactions carried out over a network between account holders and participating entities, said method comprising the steps of:

(a) receiving a purchase request of a buyer from a participating entity indicating that the buyer desires to carry out a transaction with the entity, said transaction including the buyer purchasing one or more selected items;

(b) authenticating the buyer as an account holder;

(c) receiving transaction details from the participating entity, said transaction details including a cost for the purchase;

(d) authorizing completion of the transaction and establishing an authorization code therefor, wherein authorizing completion of the transaction and establishing an authorization code therefor includes:

transmitting the transaction details of the authenticated account holder directly to a funding source which determines if the account holder has one of sufficient funds on deposit with the funding source or sufficient credit available through the funding source to cover the cost of the purchase; and,

receiving the authorization code from the funding source;

and,

(e) communicating the authorization code for the transaction to the participating entity.

32. (Previously Presented) A method of processing transactions carried out over a network between account holders and participating entities, wherein said method comprises:

- (a) receiving a request indicating that a buyer desires to carry out a transaction with a participating entity, said transaction including the buyer purchasing one or more selected items;
- (b) authenticating the buyer as an account holder;
- (c) receiving transaction details including one or more terms for the purchasing the selected items;
- (d) authorizing completion of the transaction and establishing an authorization code therefor;
- (e) communicating the authorization code for the transaction to the participating merchant;
- (f) obtaining settlement information from the participating entity, said settlement information including the authorization code and transaction details for the completed transaction;
- (g) confirming that the transaction details corresponding to the authorization code received with the settlement information are within a desired tolerance; and,
- (h) communicating the confirmed settlement information to a funding source to effect reimbursement of the participating entity and billing of the account holder.

33. (Previously Presented) The method according to claim 32, wherein obtaining the settlement information includes automatically capturing the settlement information from the participating entity upon an indication of delivery of the selected items.

34. (Previously Presented) The method according to claim 32, wherein step (b) precedes step (a).

35. (Previously Presented) The method according to claim 32, wherein authenticating the buyer as an account holder includes:

synchronizing a token with a periodically changing non-predictable code;  
providing the account holder with the token, said token displaying the periodically changing non-predictable code;  
receiving a code communicated by the buyer; and,  
comparing the received code with the periodically changing non-predictable code to authenticate the buyer as the account holder when the received code matches the periodically changing non-predictable code.

36. (Previously Presented) The method according to claim 23, wherein the transactions are at least partially carried out over a public network.

37. (Cancelled).

38. (Previously Presented) The method according to claim 26, wherein the transactions are at least partially carried out over a public network.

39. (Previously Presented) The method according to claim 31, wherein the transactions are at least partially carried out over a public network.

40. (Previously Presented) The method according to claim 32, wherein the transactions are at least partially carried out over a public network.

41. (Previously Presented) A system for processing a transaction carried out over a network between a financial account holder and a seller, said system comprising:

means for receiving a purchase request of a buyer from the seller indicating that the buyer desires to carry out a transaction with the seller, said transaction including the buyer purchasing one or more selected items;  
means for authenticating the buyer as the financial account holder;

means for establishing transaction fulfillment data, said transaction fulfillment data indicating a delivery destination for the selected items;

means for communicating the transaction fulfillment data to the seller;

means for receiving transaction details from the seller, said transaction details including a cost for the selected items;

means for authorizing completion of the transaction and establishing an authorization code therefor; and,

means for communicating the authorization code for the transaction to the seller.

42. (Previously Presented) The system according to claim 41, wherein the transactions are at least partially carried out over a public network.



**EVIDENCE APPENDIX**

Appellant, Appellant's representative, and/or the Assignee are aware of no evidence submitted under 37 CFR §§1.130, 1.1331, or 1.132 or of any other evidence entered by the Examiner and relied upon by the Appellant in the present appeal. Accordingly, the remainder of this page has been intentionally left blank.

**RELATED PROCEEDINGS APPENDIX**

Appellant, Appellant's representative, and/or the Assignee are aware of no related proceeding in connection with this matter. Accordingly, the remainder of this page has been intentionally left blank.